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(1)

90-1073

Supreme Court, U.S.
FILED
JAN 4 1991
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES

.....

OCTBOER TERM, 1990

.....

MARIE M. MCMAHON

Petitioner,

v.

CHARLES S. TRUMP, IV, ET AL

Respondents.

PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

.....

PETITION FOR WRIT OF CERTIORARI

.....

Marie M. McMahon, pro se
103 Pratt Street
Berkeley Springs, WV 25411
(304) 258-1117

QUESTIONS FOR REVIEW

1. Does having a valid election demand that candidate seeking office be eligible to hold said office per applicable laws, such candidate seeks to gain?

2. Does all requirements of election laws have to be met by all participating in said election (or a part thereof in any way) in order to eleminate election fraud against the people and have a valid election?

3. Does collusion between a town recorder, candidates and others who stand to gain something of value to them personally, constitute a valid election?

4. Should all candidates have to meet the same requirements as voters in order to be eligible for office?

5. Is it fraud for any candidate to seek an office which said candidate knows he is not eligible to hold?

6. Does such acts as suggested above in any question violate the "Equal Protection" of the public?

PARTIES TO PROCEEDING

1. Charles S. Trump, IV, ex-recorder.
   110 Fairfax Street
   Berkeley Springs, WV 25411(304) 258-1414.

2. J. Phillip Kesecker, Real estate
   268 Valley Road (P.O. Box 400)
   Berkeley Springs, WV 25411(304) 258-2624.

3. Harleigh E. Seely, Real estate, furniture.
   P. O. Box 70 (522 South)
   Berkeley Springs, WV 25411(304)258-2343.

4. Lisa M. Gruber, ex-recorder/councilmbr.
   422 Fairfax Street
   Berkeley Springs, WV 25411 (304) 258-3154.

5. R. Eldon Metzger, Contractor/ex-council.
   301 Martinsburg Road
   Berkeley Springs, WV 25411

6. Stephen C. McBee, Insurance/ex-council.
   130 Fairfax Street
   Berkeley Springs, WV 25411 (304)258-2403.

7. David H. Savasten, ex-prosecutor/asst pro.
   105 North Washington Street
   Berkeley Springs, WV 25411 (304) 258-2063.

8. Grace Borell, former council member.
   404 Congress Street
   Berkeley Springs, WV 25411

9. David M. Hall, ex-council member.
   601 Johnson Mill Road
   Berkeley Springs, WV 25411 (304) 258-1243.

10. Mary Gano Parrill, ex-council member.
    109 Pratt Street
    Berkeley Springs, WV 25411 (304)258-1108.

11. Melissa K. Marland, Adm Law Judge (PSC)
    201 Brooks Street
    Charleston, WV 25323

12. Thomas W. Steptoe, Jr., Cir. Ct. Judge.
Jefferson County Courthouse
Charles Town, WV 25414

13. Andrew M. Frye, Jr., Cir. Ct. Judge.
P. O. Box 446
Petersburg, WV 26847-0446

14. C. Reeves Taylor, Cir Ct. Judge.
Mineral County Courthouse
Keyser, WV 26726

15. Richard Gay, County Com./attorney.
202 Congress Street
Berkeley Springs, WV 25411

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I

JURISDICTION OF U.S. SUPREME COURT

On October 12 and 19, 1990, the United States Court of Appeals for the Fourth Circuit denied Petition for Rehearing/Rehearing in BANC. Fourth Circuit affirmed District Court on September 17, 1990, and October 3, 1990. Reconsideration was denied by District Court January 30, 1990; District Court dismissed on January 17, 1990.

The Supreme Court of the United States has jurisdiction to review the judgments in question under 28 U.S.C., sec. 1254 (1), 2106 and Rule 10, Rules of Supreme Court.

II

CONSTITUTIONAL AND STATUTORY PROVISIONS

1. First Amendment, United States Const.

"Courts shall make no law"..."Abridging the rights of the people"..."To petition the Government for redress of grievances."

2. Fourteenth Amend., United States Const.

"All persons born or naturalized in the United States , and subject to the jurisdiction thereof, are citizens of the United States and of

State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive ...any person within its jurisdiction the equal protection of the laws."

3. Supremacy Clause, Art. 6, Cl 2

> "This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any Thing in the Constitutions or Laws of any State to the Contrary notwithstanding."

4. 42 U.S.C. sections 1983 and 1985.

Deprivation of rights, privileges, or immunities ...conspiring to deprive directly or indirectly...to person and class of persons the equal protection of the laws...acts done in furtherance of the object of such conspiracy whereby another is injured in his person or property ...the party so injured or deprived may have an action for recovery....

III

STATEMENT OF THE CASE

In 1987, then recorder Trump placed four people on the Town Council ballots who were not eligible to serve the people, per applicable laws.

a. Lisa M. Gruber did not live in the town, per her property deed (violation of WV Constitution, state code, and Town Ordinance).

b. R. Eldon Metzger was on parole (violation of U. S. Const.Art 2, sec. 4 and WV Code).

c. Stephen C. McBee is in insurance and his firm had town's insurance,(violation WV Code)(Town Ordinance).

d. David M. Hall, federal employee (violation of Hatch Act.).

2. These four were elected (no opposition) and immediately voted in council to allow extension of water lines to developers Kesecker and Seely, clients of recorder Trump.

3. Petitioner saught removal from office Gruber/Metzger on constitutional grounds which were clearly documented.

4. Attorney(county commissioner presently)

Gay's defense fee was taxpayer's money.

5. Councilmembers McBee/Gruber/ Metzger/ Parrill/Borell and Hall at one time or another voted to pay in toto $3463.93 to Gay.

6. Four Town Citizens filed with Public Service Commission (PSC) against giving the extension of water lines to developers...Petitioner saught a moratorium submitting over 250 signatures supporting same, all to no avail... PSC Law Judge granted developer's request, misrepresenting facts in order to do so. Town subsequently pumped water for months.

7. Circuit three-judge panel refused to rule on constitutional issues; sworn evidence shows pre-determination of their outcome.

8. West Virginia Supreme Court also refused to rule per constitutions or at all.

9. Petitioner later filed a class action claim in federal court; that Court dismissed, using Rule 12 b(6) and immunity for some, legislative acts for others and Rule 23a(4)deficit.

10. Fourth Circuit affirmed Dist. Court.; also used wrong date on Mandate, is Oct. 12.

11. Savasten (prosecutor at that time) re-

fused to prosecute Gruber/Metzger unless "They were after my office," locally. He also does (or his office does) much deed work for at least one of the developers (Kesecker).

12. It would be poetic justice to have those who violated the hereinabove pled laws be forced to pay Petitioners enough money to repair all the old 100 (almost) year old water system and the streets wherein said old system (water lines) lie.

13. Item 12 and the attempt to protect the Constitutions is why Petitioner filed the suit in the first place, in vice versa order.

14. This Petitioner, per se, is desperate to have judges uphold and support their Constitutional Oaths of Office. If lower courts would so act, the work load to the appeals courts could be cut drastically...also to THIS COURT. If this can not be done, then our soldiers should refuse to go to war to keep "KINGS" in office!

15. Petitioner, per se, submits the Supremacy Clause and the respective Oaths of Office does not allow for such "discretion"

by any judge concerning Constitutional Issues ...not only would Cavasten not prosecute these issues, he would not proscute election laws violations, misapproprated money nor any illegally spent taxpayer money. Additionally, the West Virginia Code does not give him any "Discretion" in that matter either. The word "SHALL" applies to all.

IV DISCUSSION OF LAW APPLICABLE

As pled above, The Constitutions as well as West Virginia Code 7-5-4 states these acts as pled SHALL demand attention and action from those people complained about herein. The judges SHALL be bound...the prosecutor SHALL prosecute...that leaves no room for discretion by either. Further, ALL have sworn to support and uphold said Constitutions. They should be prosecuted for false swearing and failure to do their duties.

In federal courts, redress for grievance about illegal acts of individuals (as well as in state courts) in a meaningful manner has not been forthcoming, instead were dismissed by

District Court, is illegal per Mitchell v. King 537 F 2d 385 (1980)because factual allegations of complaint must be accepted as true and according to Conley v. Gibson, 355 U.S. 41 (1957) District Court could not dismiss under Rule 12 if there are any facts under which relief can be granted. Ryland v. Shapiro, 708 F 2d 967 (1983) tells us:

> Mere formal right to access to the courts does not pass constitutional muster, but rather, access must be adequate, effective and meaningful, and interference with access to courts give rise to claim for relief under 1871 civil rights statute, 42 USCA, section 1983.

AND further under Lynk v. La Porta Superior Court No. 2, 789 F 2d 554 (7th Cir 1986) says:

> State's unreasonable refusal to allow federal question to be presented in its courts would be violative of the Supremacy Clause, which Supreme Court could rectify on direct review of state court's judgment. U.S. Const. Art. 6, Cl 2.

Therefore, when the three-judge panel refused to consider Metzger's Art 2, sec 4 violation of the United States Constitution, they denied equal protection to the people of the Town of Bath (Berkeley Springs) WV. If all

those people SHALL be removed, so SHALL Metzger.

Also, when the voters of the Town had to meet certain legal terms to be able to vote, per the election laws, so should said candidates have also met the same requirements. It is a Constitutional requirement of West Virginia to live in the precinct wherein they offer to vote for a period of sixty days next preceeding the election...one must be able to vote to be elected to office, per WV Const. Where is the equal protection of the law.

Since Constitutional Rights have been denied per the above by these individuals, the judges lost jurisdiction thereby according to Barger v. State of Kan, 620 F Supp 1432 (1985)

> We have, however, consistently held that suits against officers in their individual capacities are not barred by the Eleventh Amendment, citing Back v. Kansas University Psychiatry Foundation, 580 F Supp 1216 (D Kan 1983). We have allowed such to proceed on the theory that when an officer acts unconstitutionally, he is "stripped of his official or representative character and is subjected to the consequences of his official conduct. Cites omitted. Cases from 1908 thru 1984.

Further Mr. Justice Stevens stated in his opinion in Daniels v. Williams, "The constitu-

tional violation is complete as soon as the prohibited action is taken" (106 S. Ct. at 678) "The independent federal remedy is then authorized by the language and legislative history of section 1983." Also 88 Law Ed 2d 672 (1986).

V. FUNDAMENTAL RIGHTS VIOLATED

Petitioners fundamental rights were violated and they were injured thereby, by those who had the duty to act exactly the opposite; to uphold and support the Constitutions they themselves had so sworn to do. There is a pattern of such conduct by both state and federal officials. It is high time for such to stop. This Court should take steps to do just that!

VI. ARBITRARY ACTION

THIS COURT said in Daniels, supra, that the Fourteenth Amendment protects from such arbitrary action by Respondents, as herein pled. PLEASE TAKE JUDICIAL NOTICE OF ALL APPLICABLE LAWS to these facts, most of which are documented at lower courts.

VII. CONCLUSION

For those reasons stated above, this Writ

of Certiorari should issue; the lower courts refused to correct same; to fail to do so further abuses the Constitutions and conflicts with various United States Courts of Appeals decisions as cited herein and also conflicts with rulings previously by THIS COURT.

The Fourth Circuit failed to rule in accord with other Circuit of Appeals Courts (though given the chance) when it certainly appears that Lynk, supra, (7th Cir 1986) not only ruled against state's "unreasonable refusal" concerning federal issues, but states a provision for direct review by THIS COURT for state court's refusal to allow federal question in said court, is provided by the Supremacy Clause. THIS COURT SHOULD ACT!

Respectfully submitted,

Marie M. McMahon

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103 Pratt Street
Berkeley Springs, WV 25411
(304) 258-1117

APPENDIX

U.S.Dist.Ct.
Filed at
Clarksburg
90 Jan 17PM
1:16

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA

MARIE M. MCMAHON
Plaintiff

vs. Civil Action No. 89-0020-M(K)

CHARLES S. TRUMP, IV, et als.,
Defendants.

J U D G M E N T

The Court, having granted all defendants' motions to dismiss, hereby enters for the defendants.

The Clerk is directed remove this action from the docket of the Court and to transmit certified copies of this Judgment to the Plaintiff and counsel of record herein.

ENTER: 1/17/90

S/William M. Kidd
William M. Kidd
United States District Judge

I hereby certify that
the annexed instrument is a
true and correct copy of the original
filed in my office.
ATTEST: Dr. Wally Edgell
Clerk, U.S.District Court
Northern District of West Virginia

By: S/ Sheree N Thompson

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF WEST VIRGINIA

MARIE M. MCMAHON,
Plaintiff,

vs. Civil Action No. 89-0020-M(K)

CHARLES S. TRUMP, IV, et als.,
Defendants.

O R D E R

On January 26, 1990, the plaintiff file a motion for reconsideration, Upon review of said motion, the Court is of the opinion that the same is without merit and should be DENIED.

The Clerk is directed to transmit certified copies of this Order to the plaintiff and counsel of record herein.

ENTER: 1/30/90

S/ William M. Kidd
William M. Kidd
United States District Judge

I hereby certify that the annexed instrument is a true and correct copy of the original filed in my office.
ATTEST: Dr. Wally Edgel
Clerk U.S. District Court
Northern District of West Virginia

By: S/ Sheree N. Thompson

UNPUBLISHED

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 89-2840

MARIE M. MCMAHON, pro se, individually and on behalf of all persons similarly situated.

Plaintiff-Appellant,

Versus

CHARLES S. TRUMP, IV; J. PHILLIP KESECKER; HARLEIGH E. SEELY; LISA M. GRUBER; R. ELDON METZGER; STEPHEN C. MCBEE; DAVID H. SAVASTEN; GRACE BORELL; DAVID HALL; MARY GANO PARRILL; MELISSA K. MARLAND, Public Service Commission; THOMAS W. STEPTOE, JR.; ANDREW M. FRYE, JR.; C. REEVES TAYLOR; RICHARD GAY,

Defendants-Appelles.

Appeal from the United States District Court for the Northern District of West Virginia, at Martinsburg. William M. Kidd, Senior District Judge. (C/A No. 89-20-M-K)

Submitted: December 29, 1989 Decided: September 17, 1990.

Before HALL, MURNAGHAN, AND WILKINSON, Circuit Judges.

Affirmed by unpublished per curiam opinion.

Marie M. McMahon, Appellant Pro Se. Charles F. Printz, Jr., Rice, Douglas & Shingleton, Martinsburg, West Virginia; Franklin Dorrah Cleckley, Morgantown, West Virginia; William B. Carey, Berkeley Springs, West Virginia; David Paul Cleek, Charleston, West Virginia, for Appellees.

PER CURIAM:

Marie M. McMahon appeals from the district court's order denying relief under 42 U.S.C. § 1983.* Our review of the record and the district court's opinion discloses that this appeal is without merit. Accordingly, we affirm on the reasoning of the district court. McMahon v. Trump, C/A No. 89-20-M-K (N.D.W.Va. Oct 3,1989; Jan. 17, 1990: Jan 30, 1990). We dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the Court and argument would not aid the decisional process.

AFFIRMED

---

* In her "Amended Notice of Appeal" filed on February 7, 1990, McMahon has apparently abondoned her appeal from both the October 3, 1989, order granting the motion to dismiss the complaint as a class action and the October 20, 1989 order denying her motion for reconsideration of the court's October 3, 1989, orders dismissing some of the defendants from the action.

Unpublished opinions are not binding precedent in this circuit.
See I.O.P. 36.5 and 36.6

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
October 12, 1990

No. 89-2840

MARIE M. MCMAHON, pro se, individually and on behalf of all persons similarly situated.
Plaintiff-Appellant

v.

CHARLES S. TRUMP, IV; J? PHILLIP KESECKER; HARLEIGH E. SEELY; LISA M. GRUBER; R ELDON METZGER; STEPHEN C. MCBEE; DAVID H. SAVASTEN; GRACE BORRELL; DAVID HALL; MARY GANO PARRILL MELISSA K. MARLAND, Public Service Commission; THOMAS W. STEPTOE, JR.; ANDREW M. FRYE, JR.; C. REEVES TAYLOR; RICHARD GAY:
Defendants-APPELLEES

On Petition for Rehearing with Suggestion for Rehearing in Banc

---

The Appellant's petition for rehearing and suggestion for rehearing in banc were submitted to this Court. As no member of this Court or the panel requested a poll of the suggestion for rehearing in banc, and

As the panel considered the petition for rehearing and is of the opinion that it should be denied,

IT IS ORDERED that the petition for rehearing and suggestion for rehearing in banc are denied. For the Court, John M. Greacen, Clerk.

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

FILED
October 19, 1990

No. 89-2840

McMahon v. Trump

M A N D A T E

The Judgment of this court dated 9/17/90 takes effect today.

JOHN M. GREACEN
CLERK

.....
This ADDEMDUM by Petitioner...Petitioner did not abondon any appeal which records should reflect AND she is convinced that the 9/17/90 date above hereon is not correct...if so this Petitioner did not receive a copy of such Judgment. Marie M. McMahon, 12/18/90.
.....